



Senate

General Assembly

File No. 229

February Session, 2006

Substitute Senate Bill No. 232

Senate, March 30, 2006

The Committee on Energy and Technology reported through SEN. FONFARA of the 1st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING TELECOMMUNICATIONS COMPETITION
AND PROMOTING BROADBAND INTERNET COMPETITION.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 16-247f of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2006*):

3 (a) The department shall regulate the provision of
4 telecommunications services in the state in a manner designed to foster
5 competition and protect the public interest.

6 (b) Notwithstanding the provisions of section 16-19, [a
7 telecommunications service] the following telecommunications
8 services shall be deemed competitive services: (1) A
9 telecommunications service offered on or before July 1, 1994, by a
10 certified telecommunications provider and a wide area telephone
11 service, "800" service, centrex service or digital centrex service offered
12 by a telephone company, [shall be deemed a competitive service. Any]

13 (2) a telecommunications service offered to business customers by a
14 telephone company, (3) a home office service offered by a telephone
15 company, and (4) a telecommunications service provided by a
16 telephone company or its affiliate to a residential customer who
17 subscribes to two or more telephone company services, including basic
18 local exchange service, any vertical feature or interstate toll. Unless
19 reclassified pursuant to this section, any other service offered by a
20 telephone company on or before July 1, 1994, shall be deemed a
21 noncompetitive service, provided such initial classification shall not be
22 a factual finding that such service is noncompetitive. Notwithstanding
23 subdivision (3) of subsection (c) of section 16-247b, prior to January 1,
24 2010, a telephone company shall not be required to obtain a waiver
25 from the department of the pricing standard set forth in subdivision (1)
26 of subsection (c) of section 16-247b for any service reclassified as
27 competitive pursuant to subdivision (2), (3) or (4) of this subsection.

28 (c) On petition, on its own motion, or in conjunction with a tariff
29 investigation conducted pursuant to subsection (f) of this section, after
30 notice and hearing, and within ninety days of receipt of a petition or its
31 motion or within the time period set forth in subsection (f) of this
32 section, as applicable, the department may reclassify a
33 telecommunications service as competitive, emerging competitive or
34 noncompetitive, in accordance with the degree of competition which
35 exists for that service in the marketplace, provided (1) a competitive
36 service shall not be reclassified as an emerging competitive service and
37 (2) the department may extend the period (A) before the end of the
38 ninety-day period and upon notifying all parties to the proceedings by
39 thirty days, or (B) in accordance with the provisions of subsection (f) of
40 this section, as applicable.

41 (d) In determining whether to reclassify a telecommunications
42 service, the department shall consider:

43 (1) The number, size and geographic distribution of certified
44 telecommunications providers of the service, provided the department
45 shall not reclassify any service as competitive if such service is

46 available only from a telephone company or an affiliate of a telephone
47 company that is a certified telecommunications provider;

48 (2) The availability of functionally equivalent services in the
49 relevant geographic area at competitive rates, terms and conditions,
50 including, but not limited to, services offered by certified
51 telecommunications providers, providers of commercial mobile radio
52 services, as defined in 47 CFR 20.3, voice over Internet protocol
53 providers and other services provided by means of alternative
54 technologies;

55 [(3) The financial viability of each company providing a functionally
56 equivalent service in the relevant market;]

57 [(4)] (3) The existence of barriers to entry into, or exit from, the
58 relevant market;

59 [(5) Other indicators of market power which the department deems
60 relevant, which may include, but not be limited to, market penetration
61 and the extent to which the provider of the service can sustain the
62 price for the service above the cost to the company of providing that
63 service;

64 (6) The extent to which other telecommunications companies must
65 rely upon the service to provide their telecommunications services;]

66 [(7)] (4) Other factors that may affect competition; and

67 [(8)] (5) Other factors that may affect the public interest.

68 (e) Each certified telecommunications provider and each telephone
69 company shall file with the department a new or amended tariff for
70 each competitive or emerging competitive intrastate
71 telecommunications service authorized pursuant to section 16-247c. A
72 tariff for a competitive service shall be effective on five days' written
73 notice to the department. A tariff for an emerging competitive service
74 shall be effective on twenty-one days' written notice to the department.
75 A tariff filing for a competitive or emerging competitive service shall

76 include (1) rates and charges which may consist of a maximum rate
77 and a minimum rate, (2) applicable terms and conditions, (3) a
78 statement of how the tariff will benefit the public interest, and (4) any
79 additional information required by the department. A telephone
80 company filing a tariff pursuant to this section shall include in said
81 tariff filing the information set forth in subdivisions (1) to (4), inclusive,
82 of this subsection, a complete explanation of how the company is
83 complying with the provisions of section 16-247b and, in a tariff filing
84 which declares a new service to be competitive or emerging
85 competitive, a statement addressing the considerations set forth in
86 subsection (d) of this section. If the department approves a tariff which
87 consists of a minimum rate and a maximum rate, the certified
88 telecommunications provider or telephone company may amend its
89 rates upon five days' written notice to the department and any notice
90 to customers which the department may require, provided the
91 amended rates are not greater than the approved maximum rate and
92 not less than the approved minimum rate. A promotional offering for a
93 previously approved competitive or emerging competitive tariffed
94 service or a service deemed competitive pursuant to [section 16-247f]
95 this section shall be effective on three business days' written notice to
96 the department.

97 (f) On petition or its own motion, the department may investigate a
98 tariff or any portion of a tariff, which investigation may include a
99 hearing. The department may suspend a tariff or any portion of a tariff
100 during such investigation. The investigation may include, but is not
101 limited to, an inquiry to determine whether the tariff is predatory,
102 deceptive, anticompetitive or violates the pricing standard set forth in
103 subdivision (1) of subsection (c) of section 16-247b. Not later than
104 seventy-five days after the effective date of the tariff, unless the party
105 filing the tariff, all statutory parties to the proceeding and the
106 department agree to a specific extension of time, the department shall
107 issue its decision, including whether to approve, modify or deny the
108 tariff. If the department determines that a tariff filed as a new service
109 is, in fact, a reclassification of an existing service, the department shall
110 review the tariff filing as a petition for reclassification in accordance

111 with the provisions of subsection (c) of this section.

112 (g) The provisions of this section shall not prohibit the department
113 from ordering different tariff filing procedures or effective dates for an
114 emerging competitive service, pursuant to a plan for an alternative
115 form of regulation of a telephone company approved by the
116 department in accordance with the provisions of section 16-247k.

117 Sec. 2. Section 16-247i of the general statutes is repealed and the
118 following is substituted in lieu thereof (*Effective July 1, 2006*):

119 (a) Not later than January 1, [1995] 2007, and annually thereafter, the
120 department shall submit a report to the [General Assembly] joint
121 standing committee of the General Assembly having cognizance of
122 matters relating to energy and technology on the status of
123 telecommunications service and regulation in the state of Connecticut.
124 Such report shall include: (1) An analysis of universal service and any
125 changes therein; (2) an analysis of the impact, if any, of competition in
126 telecommunications markets on the work force of the state and
127 employment opportunities in the telecommunications industry in the
128 state; (3) an analysis of the level of regulation which the public interest
129 requires; (4) the status of implementing the provisions of sections 16-
130 247a to 16-247c, inclusive, 16-247e to 16-247h, inclusive, 16-247k and
131 this section, including achieving each of the objectives of the goals set
132 forth in section 16-247a; (5) the status of the development of
133 competition for all telecommunications services; [and] (6) the status of
134 the deployment of telecommunications infrastructure in the state; and
135 (7) the status of the implementation of sections 16-247f and 16-247i of
136 the general statutes, as amended by this act, and section 3 of this act.

137 (b) In compiling the information for this report, the department
138 shall require, among other things, each telephone company to provide
139 to the department annually: (1) Its aggregate number of telephone
140 access lines in service, not including resold lines or other wholesale
141 lines; (2) the annual change in such telephone company's access lines
142 over the preceding five years; (3) the number of active wholesale
143 customers served by the telephone company; (4) the nature of the

144 wholesale services provided; (5) the number of wholesale service
145 requests; (6) the impact of competition on the work force of the
146 telephone company; (7) a general discussion of the state of the
147 industry, industry trends, and competitive alternatives available in the
148 market, including, but not limited to, technological changes affecting
149 the market; (8) the number of competitive local exchange carriers; and
150 (9) how long it takes the company to respond to a wholesale service
151 request.

152 Sec. 3. (*Effective July 1, 2006*) In the event that the Federal
153 Communications Commission grants AT&T Connecticut's Federal
154 Communications Commission Emergency Petition, WC Docket No. 04-
155 30, The Southern New England Telephone Company Petition for
156 Declaratory Ruling and Order Preempting the Connecticut
157 Department of Public Utility Control's Decision Directing the Southern
158 New England Telephone Company to Unbundle its Hybrid Fiber
159 Coaxial Facilities, then The Southern New England Telephone
160 Company, or its successor entity shall entertain offers for one dollar, or
161 the best offer it receives, for the purchase of the currently unused
162 portions of its coaxial facilities that were previously part of the hybrid
163 fiber coaxial network used by an affiliate to provide video service.

164 Sec. 4. Subdivision (4) of subsection (a) of section 7-536 of the
165 general statutes is repealed and the following is substituted in lieu
166 thereof (*Effective October 1, 2006*):

167 (4) "Local capital improvement project" means a municipal capital
168 expenditure project for any of the following purposes: (A) Road
169 construction, renovation, repair or resurfacing, (B) sidewalk and
170 pavement improvements, (C) construction, renovation, enlargement or
171 repair of sewage treatment plants and sanitary or storm, water or
172 sewer lines, including separation of lines, (D) public building
173 construction other than schools, including renovation, repair, code
174 compliance, energy conservation and fire safety projects, (E)
175 construction, renovation, enlargement or repair of dams, bridges and
176 flood control projects, (F) construction, renovation, enlargement or

177 repair of water treatment or filtration plants and water mains, (G)
178 construction, renovation or enlargement of solid waste facilities, (H)
179 improvements to public parks, (I) the preparation and revision of local
180 capital improvement plans projected for a period of not less than five
181 years and so prepared as to show the general description, need and
182 estimated cost of each individual capital improvement, (J)
183 improvements to emergency communications systems, (K) public
184 housing projects, including renovations and improvements and energy
185 conservation and the development of additional housing, (L)
186 renovations to or construction of veterans' memorial monuments, (M)
187 thermal imaging systems, (N) bulky waste and landfill projects, (O) the
188 preparation and revision of municipal plans of conservation and
189 development adopted pursuant to section 8-23, as amended, provided
190 such plans are endorsed by the legislative body of the municipality not
191 more than one hundred eighty days after adoption by the commission,
192 (P) acquisition of automatic external defibrillators, [and] (Q) floodplain
193 management and hazard mitigation activities, and (R) activities to
194 develop or install a broadband network to be deployed, operated and
195 maintained throughout a municipality pursuant to section 5 of this act.
196 ["Local capital improvement project" means only capital expenditures
197 and includes repairs incident to reconstruction and renovation but
198 does not include ordinary repairs and maintenance of an ongoing
199 nature and "floodplain management"] "Floodplain management" and
200 "hazard mitigation" shall have the same meaning as in section 25-68j.

201 Sec. 5. (NEW) (*Effective October 1, 2006*) (a) For purposes of this
202 section, "broadband" means an Internet system with a data
203 transmission rate to the end user of not less than one million bits per
204 second and a data transmission rate from an end user of at least three
205 hundred eighty-four thousand bits per second.

206 (b) A municipality may apply to the Secretary of the Office of Policy
207 and Management for a project grant from the Local Capital
208 Improvement Fund, pursuant to the procedures in section 7-536 of the
209 general statutes, as amended by this act, for (1) activities relating to the
210 planning of a municipal broadband network, provided the download

211 speed of the network will be not less than one million bits per second
212 and the upload speed of such network will be not less than three
213 hundred eight-four thousand bits per second, and (2) the installation of
214 a municipal broadband network, provided such network operates on
215 symmetrical upload and download speeds of not less than one and
216 one-half million bits per second. A municipality that seeks to develop
217 or install a municipal broadband network with a project grant from the
218 Local Capital Improvement Fund shall offer, on terms set by the
219 municipality, the right of first refusal to develop or install said
220 network to the local telephone company and community antenna
221 television company franchise, provided a municipality may reject a
222 proposal that the municipality determines is not in the best interest of
223 the municipality.

224 (c) A municipality developing a broadband network pursuant to
225 this section shall, by a vote of its legislative body, except where the
226 legislative body is the town meeting, by the board of selectmen, create
227 a new board or commission to be designated as the broadband
228 network authority for such municipality, provided a public hearing is
229 held prior to such action, at which disclosure of the proposed service is
230 made, including a detailed schedule for service availability, as well as
231 the costs and impact on taxpayers of the construction of the proposed
232 municipal broadband network and the operation of the service. If a
233 new board or commission is created, the municipality shall, by
234 ordinance, determine the number of members thereof, their
235 compensation, if any, whether such members shall be elected or
236 appointed, the method of their appointment, if appointed, and
237 removal and their terms of office, which shall be so arranged that not
238 more than one-half of such terms shall expire within any one year. The
239 broadband network authority of the town within which there is a city
240 or borough shall not exercise any power within such city or borough
241 without the express consent of such city or borough.

242 (d) A municipality developing a municipal broadband network
243 pursuant to this section shall establish standards to ensure that the
244 costs and expenses of a municipality constructing, purchasing or

245 operating a broadband network are accurately attributed to such
246 network.

247 (e) A municipality developing a municipal broadband network
248 pursuant to this section shall pay the custodian of a pole or owner of
249 an underground facility to which the municipal broadband network
250 will be attached or in which the network will be placed any costs
251 associated with making the facility ready for placement that would be
252 payable by any other non-municipal service provider.

253 (f) A municipality developing a municipal broadband network
254 pursuant to this section shall not lease or otherwise make available the
255 broadband network to a third party.

256 (g) A municipality developing a municipal broadband network
257 pursuant to this section shall not use said network for any
258 communications services other than broadband service.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2006</i>	16-247f
Sec. 2	<i>July 1, 2006</i>	16-247i
Sec. 3	<i>July 1, 2006</i>	New section
Sec. 4	<i>October 1, 2006</i>	7-536(a)(4)
Sec. 5	<i>October 1, 2006</i>	New section

Statement of Legislative Commissioners:

In subsection (c) of section 5, "by the board of selectmen" was added for purposes of statutory consistency.

ET *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
All	GF - Cost/Savings	Potential Indeterminate	Potential Indeterminate
Treasurer, Debt Serv.	GF - Cost	Potential	Potential

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 07 \$	FY 08 \$
All Municipalities	Revenue Gain	Potential	Potential
All Municipalities	Cost/Savings	Potential Indeterminate	Potential Indeterminate

Explanation

The bill deems certain services offered by telephone companies or their affiliates to be competitive. Due to the intricate nature of competition in the telecommunications market, the outcome on competition is not clear at this point. If there is greater competition, it is likely that rates will decrease thus reducing the state's telecommunications expenses. If there is less competition, it is likely that rates will increase thus increasing the state's telecommunications expenses.

The bill also adds municipal initiatives to promote broadband access to the list of purposes for which General Obligation (GO) bond funds can be used under the Local Capital Improvement Program (LoCIP) and eliminates certain restrictions regarding the use of LoCIP funds. To the degree that this causes GO bond funds to be expended more rapidly than they otherwise would have been, there will be an increase in debt service costs in future years. The unallocated balance for LoCIP as of 3/24/06 is \$31.1 million.

The bill makes other various changes to the laws regarding telephone companies, none of which are anticipated to have a fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 232*****AN ACT CONCERNING TELECOMMUNICATIONS COMPETITION
AND PROMOTING BROADBAND INTERNET COMPETITION.*****SUMMARY:**

This bill deems certain services offered by telephone companies or their affiliates to be competitive and therefore subject to less extensive regulation. It appears to exempt the companies from a statutory pricing standard with regard to these services until January 1, 2010.

By law, the Department of Public Utility Control (DPUC) can change how a service is classified after considering various factors. The bill eliminates three of the factors and modifies another.

The bill requires Southern New England Telephone (SNET) or its successor (i.e., AT&T) to offer part of its hybrid fiber coaxial system for sale under certain circumstances.

By law, DPUC can investigate telecommunications tariffs. The bill specifically allows the investigation to address whether the tariff is predatory, deceptive, or anticompetitive, or violates the pricing standard.

Under current law, DPUC must report to the legislature annually on the status of telecommunications competition and regulation. The bill instead requires the report go to the Energy and Technology Committee, and that it describe the bill's implementation. It also requires telephone companies to provide certain information to DPUC in connection with the report.

The bill makes municipal initiatives to promote broadband networks eligible for funding under the Local Capital Improvement

Program (LOCIP) under certain circumstances. It eliminates a provision that (1) restricts using LOCIP funds to capital expenditures (although the law also allows the funds to be used for certain planning and floodplain management activities) and (2) bars using these funds for ordinary, ongoing repairs and maintenance, as distinct from repairs connected with reconstruction and renovation projects.

EFFECTIVE DATE: July 1, 2006, except the LOCIP provisions and which take effect October 1, 2006 for.

SERVICES DEEMED COMPETITIVE

By law, telecommunications services are classified as competitive, emerging competitive, and noncompetitive, with the classification affecting how a service is regulated. Certain services, such as 800 service are statutorily considered competitive. The bill deems the following to be competitive: (1) business and home office services offered by a telephone company (Verizon in parts of Greenwich, AT&T elsewhere) and (2) services offered by these companies and their affiliates to residential customers who subscribe to two or more telephone company services, including basic local exchange services, vertical features (e.g., caller identification), and interstate toll service. Currently, these services are classified as noncompetitive. The reclassification means that these services will be subject to less extensive regulation. Among other things, it will reduce the notice a telephone company must provide before changing the tariff for such services, which among other things sets the rate charged for the service.

PRICING STANDARD

Among other things, telephone companies provide wholesale services to their retail competitors. For example, while a competitor may have its own long distance network, it may rely on the telephone company's local network to transport a call from a central office to a home or business.

Current law sets a floor on the rates that telephone companies can

charge for their services that are determined to be competitive or emerging competitive. The floor is equal to (1) the rate the telephone company charges a competitor for the local network services that are noncompetitive or emerging competitive plus (2) the telephone company's incremental costs. For example, if a telephone company charges its competitors one cent per minute for providing local network services for business customers, the telephone company's total rate for a business customer cannot be less than this network charge plus the telephone company's added (incremental) cost in serving the customer. The bill affects the first component of the floor by deeming certain services to be competitive.

Current law allows DPUC to modify or remove this standard under certain circumstances (CGS § 16-247b(c)). The bill states, that notwithstanding these provisions, "a telephone company shall not be required to obtain a waiver from the department of the pricing standard" until January 1, 2010 with regard to the services the bill reclassifies. It therefore appears to exempt these services from the standard during this period.

RECLASSIFICATION

The law establishes a process by which DPUC can reclassify a service provided by a telephone company or a certified telecommunications provider. Current law requires DPUC to consider eight criteria in determining whether to reclassify a service. The bill modifies one of the criteria and eliminates three others.

Under current law, DPUC must consider the availability of functionally equivalent services in the relevant geographic area at competitive rates, terms, and conditions. The bill specifies that these services can include those offered by certified telecommunications providers, cell companies and other commercial mobile radio services providers, voice-over Internet protocol providers (e.g., Vonage), and other providers using alternative technologies.

The bill eliminates the requirements that DPUC consider:

1. the financial viability of each of these providers,
2. the existence of market power that DPUC considers relevant (other than barriers to firms entering and leaving the market, which by law and under the bill it must consider), and
3. the extent to which other telecommunications companies must rely on the service to provide their own services.

HYBRID FIBER COAXIAL SYSTEM

By law, DPUC must order a telephone company to unbundle its network, under certain circumstances, to make its components available to the company's competitors. (Federal law has a similar provision.) DPUC ordered SNET to unbundle its hybrid fiber coaxial facilities, which were originally used to provide both video and telecommunications services. SNET appealed this order in several venues, including the Federal Communications Commission (FCC).

Under the bill, if FCC rules in favor of the company, SNET or its successor must entertain offers of \$1 or more for the purchase of the currently unused part of its coaxial facilities that were previously part of the hybrid fiber coaxial network that the company's affiliate used to provide video services.

DPUC REPORT ON TELECOMMUNICATIONS COMPETITION

Under the bill, when DPUC compiles its annual telecommunications report, it must require each telephone company to provide information on:

1. its aggregate number of access lines, other than resold lines or other wholesale lines;
2. the annual change in its number of access lines over the last five years;
3. the number of active wholesale customers the company serves and the nature of the wholesale services;

4. the number of wholesale service requests and how long it takes for the company to respond to them;
5. the number of competitive local exchange carriers;
6. the impact of competition on the company's workforce; and
7. the state of the industry, industry trends, and competitive alternatives available in the market, and technological changes affecting the market.

LOCIP

Eligible Activities

By law, LOCIP funds can be used for a wide variety of local capital projects as well as certain planning and floodplain management activities.

The bill allows a municipality to apply to the Office of Policy and Management (which runs the LOCIP grant program) for funding for:

1. activities related to planning a municipal broadband network that has a download speed of at least one million bits per second (bps) and an upload speed of at least 384,000 bps; and
2. the installation of network with a symmetrical upload and download speed of at least 1.5 million bps.

The network must be deployed, operated, and maintained throughout the municipality,

Development Process

To be eligible for LOCIP funding, the municipality must first hold a public hearing that discloses (1) the proposed service, (2) a detailed schedule of service availability, and (3) the costs and impacts on taxpayers for constructing the network and operating the broadband service.

The municipality's legislative body (the board of selectmen in town

meeting towns) must then create a new board or commission to serve as the municipal broadband network authority. It must adopt an ordinance specifying:

1. the number of authority members;
2. their compensation, if any;
3. whether the members will be elected or appointed;
4. how appointments are made;
5. how members would be removed from office; and
6. their terms of offices, which must be arranged so that no more than one half of the members' terms expire in any one year.

The authority of the town that contains a city or borough cannot exercise any power in the city or borough without its express consent.

A municipality seeking to develop or install a network using LOCIP funds must offer the local telephone and cable TV company a right of first refusal to develop or install the network. However, the municipality can reject a proposal it determines is not in its best interest.

Related Provisions

A municipality developing a network with LOCIP funds must:

1. establish standards to ensure that its costs and expenses in building, buying, or operating a network are accurately attributed to the network and
2. pay the custodian of poles and owners of underground facilities used in the network for any costs incurred in making the facility ready for placement that would be due from any other non-municipal provider.

The municipality may not (1) lease or otherwise make the network

available to a third party or (2) use the network for any communications services other than broadband services.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/14/2006)